IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 27719 of 2006(Y)

PETITIONER:

THOMAS IMMANUEL KUNNATHODATHU @
TOMY M.VARIKKATT, S/O.MANI @ IMMANUEL,
AGED 50, RESIDING AT KUNNATHODATHU VARIKKAT
HOUSE, KARIMANNOOR VILLAGE, THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY, HOME DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, TRIVANDRUM.

3. SUB INSPECTOR OF POLICE,
MANNARKADU POLICE STATION,
PALAKKAD DISTRICT.

ADDL. 4. DR.E.G.MOHANKUMAR, S/O.GOPALAKRISHNA PANICKER,
AISWARYA, PERINTHALMANNA,
MALAPPURAM DISTRICT.

5. DR.SUJATHA MOHANKUMAR, W/O.DR.E.G.MOHANKUMAR,
OF DO.DO.DO.

[ADDL.RESPONDENTS 4 & 5 ARE IMPLEADED AS PER ORDER IN I.A.ANO.15527/06
DATED 17/01/2007.]

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.V.SUKUMARAN
SRI.RENGANATH.K.G.
SRI.BINDHU SREEKUMAR
GOVERNMENT PLEADER SMT.LATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/01/2007, ALONG WITH CRMC NO. 3429 OF 2006
THE COURT ON 17/01/2007 DELIVERED THE FOLLOWING:

R.BASANT, J

W.P.C.No.27719 of 2006 & Crl.M.C.No.3429 of 2006

Dated this the 17th day of January 2007

JUDGMENT

The petitioner in W.P.C.No.27719 of 2006 is the defacto complainant in Crime No.579/2005 of Mannarkkad police station and the short prayer made in the said writ petition is that a more efficient and competent person may be entrusted with the investigation of that crime registered under Sections 467, 468 and 471 I.P.C and Section 72 of the Registration Act. His grievance is that though he had filed a private complaint against five accused persons and the same was referred to the police by the learned Magistrate under Section 156(3) Cr.P.C, no investigation worth the name has been conducted so far notwithstanding the fact that he has obliged to come to this court and seek an order in W.P.C.8588 of 2006 (copy produced as Ext.P4). This court had accepted the submission of the investigating officer that the final report shall be submitted without delay. Even though that order dated 01/06/2006 directed the investigating officer to file the final report positively within three months, no such report has been filed so far nor has

any meaningful investigation been conducted, complains the petitioner/defacto complainant. Crl.M.C.No.3429 is filed by accused No.2 and 3 in that crime for a direction under Section 482 Cr.P.C to quash the F.I.R registered in so far as it relates to the petitioners (accused No.2 and 3). Parties shall be referred to hereinafter as the defacto complainant and accused 2 and 3 respectively to avoid any confusion.

2. The defacto complainant alleged in the private complaint filed by him that a document dated 28/01/2004 was executed by the first accused describing himself to be the power of attorney holder of the defacto complainant whereunder property was conveyed to the child of accused 2 and 3. Accused 2 and 3 are doctors/medical practitioners and the document is executed in favour of their minor child. First accused is the brother of the defacto complainant and the person who claimed to be the holder of such power of attorney. Accused 2 and 3 as stated earlier are parents of the minor child who is the beneficiary under the allegedly forged sale deed dated 28/01/2004. Accused 4 and 5 are allegedly the attesters of the forged deed of power of attorney allegedly executed by the

defacto complainant on the strength of which sale deed dated 28/01/2004 was executed by the first accused. Accused 2 and 3 pray that the F.I.R against them may be quashed.

3. What is the reason? The learned counsel contends that it is improbable that two doctors would indulge in such a crime. That contention cannot obviously be accepted on the strength of the alleged respectability of all medical practitioners. It is submitted that there is no specific allegation of any involvement of accused 2 and 3. No specific circumstance has been precisely pointed out to infer culpable liability of accused 2 and 3. But there is a broad circumstance/probability that the alleged power of attorney is a special power of attorney for execution of this specific sale deed and the beneficiaries under the sale deed are none other than the child of accused 2 and 3. The learned counsel for accused 2 and 3 submits that accused 2 and 3 are not aware if it is a general power of attorney or a special power of attorney. They are seeking to quash the F.I.R and they had taken the document dated 28/01/2004 on the strength of such power of attorney. Their attempt to feign ignorance about the details of the power of attorney cannot carry

conviction at this stage.

4. Though I do not find any convincing reason to invoke the powers under Section 482 Cr.P.C to quash the F.I.R in so far as it relates to accused 2 and 3, I appreciate the anxiety of accused 2 and 3 and I am satisfied that appropriate directions can be issued in their favour to ensure that they are not unnecessarily vexed and harassed in the name of this investigation which is pending against them. It can be directed that they shall not be arrested by the investigating officer without and before submitting a report to the learned Magistrate in charge and after the learned Magistrate issues a warrant for their arrest. I am satisfied, the interests of justice can be so secured and the apprehensions aired by accused 2 and 3 can thus be allayed.

5. Coming to the question of investigation by the third respondent herein, no satisfactory explanation is offered as to why even inspite of Ext.P4 order, no steps have been taken for the proper investigation so far. The learned Public Prosecutor on behalf of the third respondent submits that the defacto complainant is involved as an accused in other crimes and that

he is not available to be questioned in the course of investigation. The learned counsel for the defacto complainant submits that at no point of time has the defacto complainant been summoned to appear. The unnecessary excuse that the defacto complainant is not co-operating with the investigator is pressed into service only to explain the failure to comply with Ext.P4, submits the learned counsel for the defacto complainant.

6. I am satisfied, from the submissions made at the Bar and on a perusal of all records that in the interests of the defacto complainant as also accused 2 and 3, it must be directed that an efficient and expeditious investigation is conducted by the police. Ext.P4 and the nature of submissions made on behalf of the third respondent before me by the learned Public Prosecutor do compellingly persuade me to agree with the learned counsel for the defacto complainant and direct that the investigation must be conducted by a senior police officer not below the rank of a Circle Inspector, as may be specified by the Superintendent of Police, Palakkad. Appropriate directions to that effect can also be issued.

7. In the result,

a) W.P.C.No.27719/2006 is allowed and it is directed that the investigation shall be conducted and continued hereafter by a senior and competent police officer, not below the rank of a Circle Inspector of Police to be chosen by the Superintendent of Police, Palakkad. The learned Public Prosecutor shall forthwith communicate the direction to the Superintendent of Police. Every effort shall be made by the police to complete the investigation, as expeditiously as possible. The Superintendent of Police shall so specify the investigating officer within a period of one month from this date.

b) Crl.M.C.No.3429/2006 is dismissed but with the direction that the petitioners, that is accused 2 and 3 shall not be arrested by the investigating officer, without and before securing a warrant of arrest from the learned Magistrate who shall consider such request on merits and take appropriate decision in the matter.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006